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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended;	)	CC Docket No. 96-149
	)	
and	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

MCI requests that incumbent LEC in-region interLATA services be subject to enforcement of the imputation rules established in prior Commission orders and in Section 272(e)(3) of the Communications Act in the same manner as MCI proposed for the BOC interLATA affiliates in its August 15 Comments. Both BOCs and ILECs impose excessive access charges on their interLATA competitors, while the RBOCs, at the holding company level, and ILECs bear only the economic cost of providing access in their provision of interLATA services. Both RBOCs and ILECs are thus in a position to provide in-region interLATA service with a monopoly-based price squeeze strategy already in place.

As in the case of the BOC interLATA affiliates, any serious attempt to inhibit this price squeeze strategy must begin with enforcement of the imputation rule. All ILEC interLATA services must be tariffed, and sufficient information must be filed with any ILEC interLATA tariff to enable the Commission and ratepayers to compare all ILEC interLATA rates with all of the imputed costs of those services, on a service-by-service basis, to ensure that their interLATA rates cover all tariffed access rates and other costs. If an ILEC fails to demonstrate that a proposed interLATA rate covers all of its imputed tariffed access charges and other costs, the tariff would have to be rejected.

Accordingly, such enforcement of the imputation requirement requires tariff review, with a 45-day notice period, and full

cost support, thus precluding non-dominant treatment for ILEC in-region interLATA services, whether or not such services are provided out of a separate affiliate.

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Pursuant to the Common Carrier Bureau's August 9 Order,[1] MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby responds to Part VIII(D) of the Notice of Proposed Rulemaking (NPRM) initiating this docket.[2] Part VIII(D) raises the issue of whether incumbent local exchange carriers (ILECs) should continue to be regulated under the Commission's Competitive Carrier scheme in their provision of interLATA services originating within their local service regions and whether that scheme should be modified in any way.[3]

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[1] DA 96-1281 (released August 9, 1996).

[2] FCC 96-308 (released July 18, 1996).

[3] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third

The August 9 Order extended the due date for comments on the issues raised in Part VIII(D), while maintaining the original comment deadlines for all other issues, including the related issue of whether Bell Operating Company (BOC) affiliates providing in-region interLATA services should be treated as dominant carriers under the Competitive Carrier rules. MCI filed its initial comments on the other issues raised in the NPRM, including the proper regulatory status of BOC interLATA affiliates, on August 15, 1996 (MCI August 15 Comments).

I. INTRODUCTION

The NPRM seeks comment on whether it should allow ILECs to provide in-region interLATA services on an unseparated basis as non-dominant services and whether ILEC in-region international services should be treated similarly. The NPRM also asks whether, even if ILEC unseparated provision of in-region services should be treated as non-dominant, some separation should still be required to prevent cross-subsidies and discrimination.[4]

In its August 15 comments, the relevant portion of which is

Report and Order (Third Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[4] See NPRM at ¶¶ 153-62.

incorporated herein by reference,[5] MCI discussed the BOCs' continuing local bottleneck power and ability and incentive to exploit that dominance in the in-region interLATA market by raising competitors' costs through the imposition of excessive access charges. Even if the BOCs' interLATA affiliates are required to impute access at a tariffed rate, the Regional BOC at the holding company level never faces more than the economic cost of access, while its interLATA competitors always face the tariffed rate, which is well above economic cost. Since access charges are vastly in excess of costs right now, the BOCs will start off providing in-region interLATA service with a monopoly-based price squeeze strategy already in place. Moreover, since current access charges are in effect and must be paid by competitors who need access,[6] there are no current nondiscrimination safeguards or other regulatory constraints, including price cap regulation, that have any immediate ability to restrain this abuse of the BOCs' bottleneck power.

As MCI explained, any serious attempt to inhibit this inevitable anticompetitive strategy must begin with enforcement of the imputation rules -- both the Commission's long-standing

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[5] See MCI August 15 Comments at 57-67.

[6] MCI does not represent, however, that the access rates currently in effect are necessarily "lawful." See Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry. Co., 284 U.S. 370, 384 (1932)(legally filed rate is only lawful if it is reasonable).

rule[7] and Section 272(e)(3) of the Communications Act, added by the Telecommunications Act of 1996.[8] MCI demonstrated that in order to permit those rules to have any effect at all, the Commission must require the BOC affiliates to tariff their interLATA telecommunications services, including all volume discount and other special arrangements, and to file sufficient cost support with those tariffs to make sure that the affiliates' interLATA services cover all tariffed access charges and other costs.

MCI also explained that such enforcement of the imputation rules is absolutely necessary -- although not sufficient to cure the problem as long as access charges remain excessive[9] -- irrespective of whether the BOC affiliates are otherwise regulated as dominant carriers. As a practical matter, certain aspects of dominant regulation -- tariff review, with 45-day notice, and full cost support -- are necessary to any enforcement of imputation, thereby precluding complete non-

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[7] Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services, FCC 85-172 (released April 12, 1985).

[8] Pub. L. No. 104-104, 110 Stat. 56.

[9] As long as access charges exceed their economic costs, the RBOCs and LECs will always have a monopoly-based cost advantage in the interLATA services market because their true cost of access is only the economic cost of providing it, while the IXCs' cost of access is the much higher tariffed access charge. The internal imputation of tariffed access charges by RBOCs and LECs does not change the fact that their actual access costs are much less than their competitors' access costs.

dominant status for the interLATA affiliates.

II. ILECS ARE ALSO ABLE TO EXPLOIT THEIR BOTTLENECK POWER BY IMPOSING EXCESSIVE ACCESS COSTS ON THEIR RIVALS

Non-Bell ILECs, like BOCs, still enjoy bottleneck power that could be, and has been, used to the advantage of the ILECs' interLATA services by raising rivals' costs in the same manner as described above and in MCI's August 15 Comments in the case of the BOCs. The ILECs thus have the same ability and incentive, which they fully exercise, to impose excessive access charges on their competitors.

Given the similar types of abuses that both ILEC and BOC bottleneck power allows, the Commission is clearly correct that some additional regulatory safeguards are necessary even if it determines that unseparated ILEC interLATA services could otherwise be treated as non-dominant.[10] As in the case of the BOCs, complete non-dominance is impossible, since it is necessary to review ILEC in-region interLATA rates to ensure that they fully cover ILEC tariffed access and other costs. The burden of excessive access charges is one of the greatest and most likely threats that competition will face from both BOC and ILEC provision of in-region interLATA services. Moreover, as explained in MCI's August 15 Comments, other nondiscrimination safeguards do not affect such tactics, since, superficially, the

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[10] NPRM at ¶ 158.

ILECs' own interLATA services are internally "charged" the same access rates.[11]

Enforcement of the imputation requirement is therefore a necessary predicate for any protection for ILEC ratepayers and interLATA competition from this access charge price squeeze strategy. Even Ameritech states in its August 15 comments that "[a] BOC affiliate's retail rates will have to recover ... access charges, as well as the transport costs paid to the BOC's transmission supplier. ... [B]elow-cost pricing would provide a red flag to regulators."[12] Thus, all sides seem to agree that the imputation rules should be enforced. The only remaining issue is whether the imputation rules can be effectively enforced and, if so, how.

MCI submits that all ILEC interLATA telecommunications services must be tariffed and that sufficient information must be filed with any such tariff to enable the Commission and ratepayers to compare all ILEC interLATA rates with all of the imputed costs of those services, on a service-by-service basis, to ensure that their interLATA rates cover all tariffed access rates and other costs. Accordingly, every ILEC interLATA tariff filing should include full public cost support with a description of the access services required to provide each interLATA service and the methods and assumptions used in the calculation of the

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[11] See n. 9, supra.

[12] Ameritech August 15 Comments at 31.

imputation test for each such service, as well as a showing that the calculation was performed in a proper manner. Where the ILEC is offering a bundled interLATA and interLATA information service, or a bundled interLATA and local service, its cost support would have to include all of the relevant costs underlying all components of the package to ensure that the interLATA telecommunications service is covering all of its costs. If an ILEC fails to demonstrate that a proposed interLATA rate covers all of its imputed tariffed access charges and other costs, the tariff would have to be rejected.

Thus, enforcement of the imputation requirement not only requires full cost support, but also a full 45-day notice period to allow sufficient time for the Commission to ensure full compliance. Accordingly, complete non-dominant treatment for ILEC in-region interLATA services is impossible, whether or not such services are being provided out of a separate affiliate.

Finally, given the ILECs' continuing bottleneck power, which enables them to charge excessive access rates, some degree of separation between their local and interLATA operations is still appropriate, whether or not their interLATA services should otherwise be treated as dominant services. That bottleneck power creates a risk of discrimination and cross-subsidization, in addition to the access charge price squeeze strategy discussed above, which can at least partially be inhibited by the degree of separation required by the Competitive Carrier rules.

III. LEC IN-REGION INTERNATIONAL SERVICES SHOULD BE SUBJECT TO ALL OF THE CONDITIONS PROPOSED IN MCI'S AUGUST 15 COMMENTS FOR BOC IN-REGION INTERNATIONAL SERVICES

As in the case of BOC in-region services, ILEC in-region international and domestic services should be treated similarly, but with the same additional conditions for international services proposed for the BOCs in MCI's August 15 Comments, the relevant portion of which is incorporated herein by reference.[13] There is nothing about the differences between BOCs and ILECs that would justify any lesser regulations for ILEC international services.

CONCLUSION

Accordingly, MCI requests that ILEC in-region interLATA services be subject to enforcement of the imputation rules as described above and in MCI's August 15 Comments in this docket, irrespective of whether they are provided through a separate affiliate, and that ILEC in-region international services be

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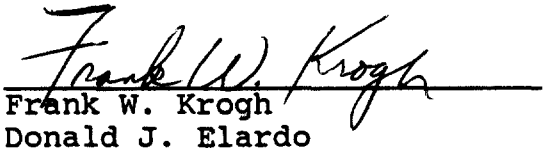
[13] See MCI August 15 Comments at 68-71.

subject to the additional requirements proposed in MCI's August 15 Comments for BOC in-region international services.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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Dated: August 29, 1996

I, Sylvia Chukwuocha, hereby certify that a true copy of the foregoing "COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION" was served this 29th day of August, 1996, by hand-delivery or first-class mail, postage prepaid, upon each of the following persons:

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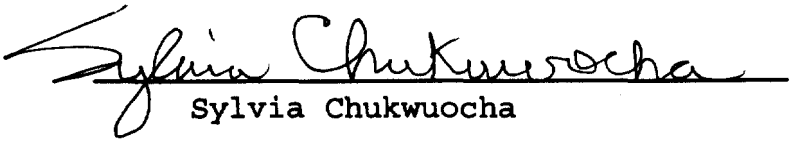

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